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13 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

14 FEDERAL TRADE COMMISSION,) Case No. 2:18-cv-10068
15)
16 Plaintiff,) COMPLAINT FOR
17 v.) PERMANENT INJUNCTION
18) AND OTHER EQUITABLE
19 NOBETES CORPORATION, a/k/a SIDE) RELIEF
EFFECTS SOLUTIONS CORPORATION,)
20 a corporation,)
21 MARVIN SILVER, individually and as an)
officer and director of Nobetes Corporation,)
and)
22 JEFFREY FLEITMAN, individually and as)
an officer and director of Nobetes)
Corporation,)
23)
24 Defendants.)

25 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:
26
27
28

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the advertising and labeling, offering for sale, sale, or distribution of Nobetes, a purported diabetes treatment.

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Nobetes Corporation (“Nobetes”), a/k/a Side Effects Solution Corporation (“SES”), is a California corporation with its principal office or place of business at 424 S. Beverly Drive, Beverly Hills, CA 90212. Nobetes

transacts or has transacted business in this district and throughout the United States.

7. Defendant Marvin Silver (“Silver”) is an officer and director of Nobetes. Individually or in concert with others, he controlled or had the authority to control the acts and practices of Nobetes, including the acts and practices alleged in this complaint. Among other responsibilities, Defendant Silver participated in product development, and the development, review, and approval of ad content and substantiation of advertising claims. His principal office or place of business is the same as that of Nobetes. Defendant Silver resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

8. Defendant Jeffrey Fleitman (“Fleitman”) is an officer and director of Nobetes. Individually or in concert with others, he controlled or had the authority to control the acts and practices of Nobetes, including the acts and practices alleged in this complaint. Among other responsibilities, Defendant Silver participated in product development, and the development, review, and approval of ad content and substantiation of advertising claims. His principal office or place of business is the same as that of Nobetes. Defendant Fleitman resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

9. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

BACKGROUND INFORMATION ON DIABETES

10. Diabetes occurs when a person's blood glucose, also known as blood sugar, is too high. Type 1 and type 2 diabetes are the most common forms of this disease. Type 1 diabetes occurs when the immune system destroys the insulin-

1 producing beta cells in the pancreas. Insulin performs the critical job of moving
2 glucose from the bloodstream to the body's cells. With beta cells destroyed,
3 glucose builds up in the blood stream. In type 2 diabetes, the body does not make
4 or use insulin well. It is caused by many factors, including genetics and lifestyle.
5 It typically starts with insulin resistance, where the body needs higher levels of
6 insulin to move glucose from the blood stream into the cells. Initially, the pancreas
7 increases insulin production to meet demand; over time, however, the pancreas
8 cannot make enough insulin, and blood glucose levels rise. As of 2015, 30.3
9 million people in the United States (9.4 percent of the population) had diabetes.

10 11. Hyperglycemia, that is, having too much glucose in the blood, can
11 cause long-term health problems. These include heart disease, stroke, kidney
12 disease, eye problems, dental disease, nerve damage, and foot problems. For
13 example, hyperglycemia can damage the blood vessels and the nerves that control
14 the heart and blood vessels. In adults with diabetes, the most common causes of
15 death are heart disease and stroke. Diabetes is also the leading cause of kidney
16 disease. Hyperglycemia can damage the blood vessels in the kidneys; as a result,
17 the kidneys cannot filter waste efficiently, and waste builds up in the body. About
18 one in four diabetic adults has kidney disease. Hyperglycemia can also damage
19 nerves in other parts of the body, resulting in vision problems including blindness,
20 and adverse changes to digestion, bowel, and bladder function. Diabetes can also
21 reduce blood flow in the feet impairing healing of sores, and sometimes requiring
22 amputation. Many of the injuries caused by hyperglycemia develop slowly and
23 can go undetected until problems become severe.

24 12. Blood sugar control is fundamental to diabetes management. For
25 diabetics, the target pre-meal blood glucose range is 80 – 130 mg/dL; two hours
26 after meals, the glucose level should be less than 180 mg/dL, as measured by a
27 blood glucose monitor. Another important measure of blood glucose is
28 Hemoglobin A1C ("A1C"), which reveals the average of a person's blood glucose

1 levels over the past three months, showing how well diabetes is controlled. The
2 A1C test result is reported as a percentage. A reasonable A1C goal for many
3 diabetic adults is less than seven percent. Studies have shown that people with
4 diabetes can reduce the risk of long-term diabetes complications by keeping A1C
5 levels below seven percent.

6 13. Diabetes can be treated, but it cannot be cured. Type 1 diabetics need
7 lifelong insulin therapy to control their blood sugar; must balance insulin intake
8 with eating and physical activity; and must continually monitor their glucose
9 levels. Some type 2 diabetics can control their blood sugar by losing weight,
10 making healthy food choices, and exercising. However, many type 2 diabetics also
11 require a diabetes drug treatment, such as insulin. Type 2 diabetes is a progressive
12 disease; over time, patients may need multiple medications to control blood sugar.

13 **DEFENDANTS' BUSINESS ACTIVITIES**

14 14. Defendants developed, advertised, labeled, offered for sale, sold, and
15 distributed Nobetes, a purported diabetes treatment. Nobetes is a 2,277 mg pill
16 containing thirty-six separate ingredients, including vitamins, minerals, and plant
17 extracts.

18 15. Each bottle of Nobetes contains 30 tablets. Between 2015 and 2018,
19 the price of a bottle of Nobetes ranged from \$29.95 to \$39.95, plus shipping and
20 handling, for new customers; and from \$15.00, plus shipping and handling, to as
21 much as \$50.60, for repeat customers. Defendants also have advertised "trial"
22 units for \$6.95, which they state covers the cost of shipping and handling.

23 **DEFENDANTS' ADVERTISING AND MARKETING**

24 16. To induce consumers to purchase their products, Defendants
25 disseminated or caused to be disseminated advertisements and promotional
26 materials on television, radio, YouTube, www.nobetes.com (which automatically
27 redirects to <https://naturalnobetes.myshopify.com>), and a Facebook page, including
28 but not limited to the attached Exhibits A through C (transcripts) and A1 through

1 C1 (videos). Portions of Exhibits A and B appeared on the Nobetes Facebook page
2 between January 2015 and September 2016. Clips from Exhibits A, B, and C
3 appeared on the Nobetes website between January 2015 and March 2017. Exhibit
4 B appeared on DirectTV and other cable stations between February 2016 and
5 September 2016. Exhibit C appeared on DirectTV and other cable stations
6 between February 2017 and July 2017. Exhibit C was disseminated after the staffs
7 of the FTC and the U.S. Food and Drug Administration sent a Warning Letter on
8 September 15, 2016 to Mr. Silver and Side Effects Solutions Corporation d/b/a
9 Nobetes Corporation, advising them that “it is unlawful under the FTC Act, 15
10 U.S.C. § 41 et seq., to advertise that a product can prevent, treat, or cure human
11 disease unless you possess competent and reliable scientific evidence, including,
12 when appropriate, well-controlled human clinical studies, substantiating that the
13 claims are true at the time they are made.”

14 17. Defendants’ advertising and promotional materials have contained the
15 following representations or statements, among others:

16 A. One-minute video

17 * * *

18 ANNOUNCER: Did you know that diabetes is the leading cause of
19 new blindness, kidney failure and 60 percent of all non-traumatic lower limb
20 amputations? Are you waiting for one of these to occur before you take
21 action? . . . Attack the problem now and naturally with Nobetes.

22 * * *

23 KYRSTEN M.: I’m a type 1 diabetic, meaning I’m insulin-
24 dependent.

25 ON SCREEN: Levels 285 [red bar falls from 285 to 115] 115
26 Blood sugar levels after only 1 day
27 Individual results will vary.
28 [phone number]

1 KYRSTEN M.: When I started taking Nobetes, my blood sugar levels
2 were up to 285. After only one day of taking Nobetes, my blood sugar
3 dropped to 115. Now, I know it seems unbelievable and, quite frankly,
4 when I looked down at my glucometer, I was surprised at what I was seeing
5 as well. And to anyone who's skeptical about Nobetes, I would tell you . . .
6 [i]t works.

7 ON SCREEN: Bob C. actual customer

8 Levels 549 [red bar falls from 549 to 84] 84

9 Blood sugar levels

10 Individual results will vary.

11 [phone number]

12 BOB C.: My blood sugar was at 549 and in a short period of time,
13 I've dropped down to 84 to 88 and a half, and I have the blood tests to prove
14 it.

15 ON SCREEN: 2 Free Bottles

16 These statements have not been evaluated by the Food and Drug
17 Administration. This product is not intended to diagnose, treat, cure, or
18 prevent any disease.

19 ANNOUNCER: Get two bottles free. Just pay processing and handling.
20 Nobetes, it could change your life forever. To order, call [phone number].

21 – Exhibits A (transcript) and A1 (video), captured
22 6/7/2017

23 B. First thirty-minute video:

24 ANNOUNCER: Is your diabetes out of control? . . . Are your
25 numbers ranging from 150 to 550 or more? . . . Are your blood sugar
26 numbers dangerously high? . . . You need to try the all-natural dietary
27 supplement called Nobetes. . . . Just listen to what other diabetics are saying.

1 KRYSTEN M.: I'm a Type 1 diabetic, meaning I'm insulin-
2 dependent. . . . When I started taking Nobetes, my blood sugar levels were
3 up to 285. After only one day of taking Nobetes, my blood sugar dropped to
4 115.

5 ON SCREEN: Levels 285 (gradual down arrow) 115 Blood sugar
6 levels
7 * * *

8 ON SCREEN: JD H. Type 2 Diabetic Actual Nobetes customer
9 J.D. H.: I used to be a 240. Now it's at 161.

10 ON SCREEN: Levels 240 (gradual down arrow) 161 Blood sugar
11 levels
12 * * *

13 EDDIE J.: Nobetes took me from 280 to 130 within a week.

14 ON SCREEN: Levels 280 (gradual down arrow) 130 Blood sugar
15 levels
16 * * *

17 EDDIE J.: And I'm – I was totally impressed because I thought the
18 only thing that would cure this situation would be some type of medication
19 recommended by a doctor. . . .
20 * * *

21 EDDIE J.: Don't get me wrong, my doctor has looked at it, and he
22 has endorsed it 100 percent.
23 * * *

24 GUADALUPE D.: I'm a Type 1 diabetic. . . . And I notice right when
25 I took Nobetes the numbers dropped . . . my numbers were 400, 300. Then it
26 went – it went down to 200, and now it's 125 . . .
27 * * *

28 ON SCREEN: Lance T. Type 2 Diabetic

1 Actual Nobetes customer

2 LANCE T.: I'm so grateful for Nobetes . . . my sugar levels were
3 [sic] 227 to 85 in less than ten days.

4 ON SCREEN: Levels 227 (gradual down arrow) 85 Blood sugar
5 levels

6 LANCE T.: At nighttime, I had tingling in my arms and dry mouth
7 and even blurry vision. This has all gone away just by taking a pill.
8 Nobetes is a natural product. . . I brought it to the doctor, and he says, if it
9 works, use it. And it works for me. I got off my other medications. . . .

10 * * *

11 LORRAINE B.: It worked. The first pill I took, I could feel a
12 difference. I went from 549 to 112 in 24 hours with Nobetes.

13 * * *

14 ANNOUNCER: Give Nobetes a try and see what this miracle product
15 can do for you. . . . Get your bottle free.

16 * * *

17 ON SCREEN: Free Bottle

18 Processing & Handling

19 \$6.95

20 * * *

21 ANNOUNCER: Just pay \$6.95 processing and handling. Go to
22 nobetes.com or call [phone number] right now.

23 * * *

24 TONY V.: . . . Nobetes is . . . really affordable, and it costs nothing to
25 try it.

26 * * *

27 GUADALUPE D.: Before Nobetes, I was taking insulin for 30
28 milligrams in the morning and 30 milligrams in the afternoon. . . . So, now,

1 I'm taking insulin only in the morning, 30 milligrams.
2 * * *

3 HENRY H.: I've been taking Nobetes now for about two years
4 [F]or the first three months, I did it three pills a day, and my blood sugar
5 went from a 9.2 down to a 6.5.

6 ON SCREEN: Levels 9 (gradual red arrow) 6.5 A1C levels

7 HENRY H.: . . . And my doctor recommended it to many of her
8 patients, and they're having success with it.

9 * * *

10 JOHN R.: . . . I was having problems. My A1Cs were running into
11 the high 7s, and I had to do something. . . . Nothing else was working for
12 me, and I did not want to do injections, so I tried this product. I dropped my
13 A1C from the high 7s to the low 6s.

14 ON SCREEN: Levels 7 (gradual red arrow) 6 A1C levels

15 JOHN R.: I suggested it to a few friends. . . . The same thing
16 happened with them. I suggested it to my mother, who was on two
17 injections per day. . . . She started taking it. And then within a month, she
18 was down to one injection a day.

19 * * *

20 TONY V.: You know, I've tried a lot of product over the years and
21 . . . without no prevail [sic], they didn't work like Nobetes. . . . Give it a try,
22 eat right, exercise, and wean yourself from medication.

23 * * *

24 BOB C.: . . . [T]his works. This is proven [to] work, and I've got the
25 blood test to prove it. Nobetes did the job, and its doing the job, and it's got
26 me under control.

27 * * *

28 DAVID D.: I have my CDL license to drive a truck. . . . That's my

livelihood, and I need to keep my blood sugars a lot lower than, you know, what they've been. . . . And I've been running about 260 to 300, right in that range, and Nobetes in a very short time has got my numbers down to where they should be, 120.

ON SCREEN: Levels 300 (gradual red arrow) 120 Blood sugar levels

HENRY H.: . . . everyone that I've . . . recommended it to, it's helped them . . . And the doctor that I go to has recommended it to her patients, and she's told me it's helped many of them . . . keeping their blood sugars in control and in check.

* * *

BOB C.: My blood sugar was at 549, and I counseled with my doctor, and he told me that he was going to give me the insulin. . . I told him there's no way that I will take insulin through an injectable needle. I said to him, I was going to try this new supplement called Nobetes . . . I was at 549. I'm down to 88 and a half. I feel great. I have no side effects, no tingling, no sharp pains. My vision's fine. And before that, I did have sharp pains in my feet and my fingers, and now everything is fine.

* * *

TONY V.: And I heard about Nobetes . . . So I called them up, ordered it, and almost immediately I start feeling more energy. . . . My thought process was not cloudy. You know, I felt – and then when I started testing the sugar levels, they dropped significantly.

- Exhibits B (transcript) and B1 (video), captured 8/11/17

C. Second thirty-minute video

ANNOUNCER: Is your diabetes out of control? Are your blood sugar numbers dangerously high? . . . You need to try the all-natural dietary

1 supplement called Nobetes. Just listen to what other diabetics are saying.

2 ON SCREEN: Mitch Darnell, MS, OSM.CTRC

3 [Mr. Darnell is standing in front of two diplomas]

4 * * *

5 MITCH DARNELL: I'm all about natural products that help
6 empower your body to heal without any side effects. . . . I was introduced to
7 Nobetes. . . . It's an all-natural dietary supplement that helps control blood
8 sugar within normal levels, with the added benefit it leaves you feeling
9 better and really contributes to your overall greater health. Nobetes has 35
10 supplements in it that can fill the nutrient shortages that diabetes causes. If
11 you were to go out and try to buy all of these supplements at \$3 to \$4 a
12 piece, it could cost you \$150 or more. Diabetics, this is the miracle product
13 you've been waiting for, Nobetes.

14 * * *

15 ANNOUNCER: Give Nobetes a try and see what this miracle product
16 can do for you.

17 ON SCREEN: Free

18 Bottle

19 Processing & Handling

20 \$6.95

21 [phone number]

22 nobetes.com

23 ANNOUNCER: Get your bottle free. Just pay 6.95 processing and
24 handling. Go to Nobetes.com or call [phone number] right now. That's
25 [phone number] right now.

26 ON SCREEN: Free

27 Bottle

28 Processing & Handling

1 \$6.95

2 Includes continuity order, cancel anytime

3 30 day money back guarantee

4 less S&H

5 [phone number]

6 nobetes.com

7 ANNOUNCER: Go to Nobetes.com or call [phone number] right
8 now.

9 * * *

10 DARYL A.: I'm a truck driver and I actually am a real Nobetes user.
11 . . . I take one Nobetes in the morning and I take one Nobetes in the evening,
12 about 12 hours apart, and that alone keeps my blood sugar at a normal level.

13 . . .

14 * * *

15 ANNOUNCER: The following are actual Nobetes customers that
16 wanted to get the word out and share with you their experience with the
17 Nobetes supplement and how it has helped them in their fight against
18 diabetes. These are not paid actors. . . .

19 * * *

20 KRYSTEN M.: When I first began taking Nobetes . . . the stress in
21 general just had me up and down with my blood sugar level. So I was
22 constantly feeling sick. I started taking Nobetes and my blood sugar levels
23 stabilized [at] a normal range. And I just felt great.

24 * * *

25 BOB C.: Well, when you take meds, you know, there's always that
26 question, is it going to work . . . this works. . . . I've got the blood tests to
27 prove it. . . . Nobetes did the job and . . . it's got me under control. . . .

28 * * *

1 TONY V.: . . . the cost of Nobetes is really affordable and it costs
2 nothing to try it. . . .

3 * * *

4 GUADALUPE D.: Before Nobetes I was taking insulin for 30
5 milligrams in the morning and 30 milligrams in the afternoon. . . . So now
6 I'm taking insulin only in the morning, 30 milligrams. I'm not taking it at
7 nighttime.

8 * * *

9 TONY V.: . . . Nobetes, you know, it saved – it have [sic] saved me
10 from, you know, the high cost of medication.

11 * * *

12 MITCH DARNELL: [standing in front of diplomas] It's important to
13 take care of yourself, control your blood sugar within normal levels and live
14 a healthy, vibrant life, and I believe Nobetes can help you do that.

15 ANNOUNCER: Is your diabetes out of control? Are your blood
16 sugar numbers dangerously high? . . . Now, you may be able to reverse this.
17 You need to try the all-natural dietary supplement called Nobetes.

18 * * *

19 HENRY H.: . . . And the doctor that I go to has recommended it to
20 her patients and she's told me it's helped many of them keeping their blood
21 sugars in control and in check.

22 * * *

23 TONY V.: And I heard about Nobetes . . . [s]o I called them up,
24 ordered it, and almost immediately I start feeling more energy. My thought
25 process was not cloudy.

26 * * *

27 ROSE A.: . . . And with Nobetes . . . my blood sugars have been in
28 normal range for the last two years. . . . I recommend the product to anybody

1 that has diabetes and they can't get it under control.
2 * * *

3 JD H.: . . . I don't want to go blind. I don't want to go get – go into a
4 coma. I don't want to have a stroke. I want to be around for my kids. . . .
5 Nobetes is changing my life.

6 * * *

7 EDDIE J.: Nobetes is really terrific for me. I've gone to quite a few
8 doctors using different types of medications and the fluctuation was just
9 drastic. It was just a disaster. And when I did take the Nobetes . . . it
10 worked for me.

11 * * *

12 TONY V.: . . . I strongly urge you to try the product. It's free and you
13 won't regret it.

14 * * *

15 ROBERT B.: . . . I still eat the same old crap I always did. But once I
16 eat all that crap, my sugar will go up. But when I take my Nobetes after
17 dinner, by evening, I'm right back where I was when I started.

18 * * *

19 JOHN S.: . . . My sugar level has been kept at a normal range.

20 * * *

21 VIRGINIA: . . . [I]f you're like me and you're having trouble keeping
22 your sugar numbers down . . . I've used lots of different products that never
23 worked and so I became very discouraged until I got the Nobetes. And
24 something is finally working and it's wonderful.

25 * * *

26 EDDIE J.: . . . when my numbers were running 280, 270, it was
27 pretty scary. To know that they're down now . . . I love the Nobetes.

28 * * *

1 MITCH DARNELL: [standing in front of diplomas] Diabetics, this
2 is the miracle product you've been waiting for, Nobetes.

3 – Exhibits C (transcript) and C1 (video),

4 Television and YouTube ad, captured 6/7/2017

5 18. According to the instructions in the advertising, consumers can order
6 Nobetes by visiting the nobetes.com website, or by calling the number presented
7 on the screen. Consumers who visit the website for the purpose of ordering the
8 free trial, however, encounter a message directing them that they must telephone
9 the company to do so.

10 19. In many instances, when consumers call to ask about the product,
11 Defendants' inbound telemarketer makes additional claims for the product. In one
12 instance, for example, the telemarketer stated that the "promotion we have today,
13 sir, is a natural supplement that will help you regulate the sugar levels in your
14 blood." He then advised that "this product has to be taken one, two, or three times
15 a day, depending on how high are your sugar levels right now," and then asked for
16 the caller's sugar level: "Are you in the 200's, 300's?" When the caller responded
17 that he was calling for his father, whose numbers were in the "200's," the
18 telemarketer recommended that his father take Nobetes twice a day, thirty minutes
19 before lunch and then an hour after dinner or before going to bed. The
20 telemarketer listed many of the product's ingredients and stated that "altogether,
21 these will help . . . with high sugar levels."

22 20. In many instances, when consumers call to ask about the product, the
23 Defendants' inbound telemarketer states that the current promotion is a trial offer
24 whereby the consumer will pay \$6.95 for shipping and handling for one 30-pill
25 bottle of Nobetes. The telemarketer then asks whether the caller would like to pay
26 with a "Visa or Master Card?" After receiving the billing information, the
27 telemarketer advises the consumer that if the product works, "then you can call us
28 back . . . to reorder another bottle."

1 21. Shortly thereafter, Defendants bill \$6.95 to the consumer's card and
2 ship them a 30-pill bottle of Nobetes.

3 22. In many instances, one month after Defendants charge the consumer
4 for the trial offer, they automatically ship a second 30-pill bottle of product to the
5 consumer, and charge \$50.60 to the consumer's credit card. Every month
6 thereafter, Defendants ship another 30-pill bottle of product, and charge the
7 consumer's card an additional \$50.60, until the consumer takes affirmative action
8 to cancel the order and request a refund.

9 23. In many instances, Defendants do not advise the trial order callers that
10 Defendants will enroll them in a continuity program, and use the consumer's
11 billing information for continuity shipments; do not advise callers how much they
12 will be charged for continuity shipments or when such charges will be assessed;
13 and do not state what the consumer needs to do to avoid such a charge. At no time
14 during the call do Defendants seek or obtain the express, informed consent of the
15 consumer to charges for continuity shipments.

16 **DEFENDANTS' VIOLATIONS OF THE FTC ACT**

17 24. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
18 deceptive acts or practices in or affecting commerce."

19 25. Misrepresentations or deceptive omissions of material fact constitute
20 deceptive acts or practices prohibited by Section 5(a) of the FTC Act. An act or
21 practice is unfair under Section 5 if it causes or is likely to cause substantial injury
22 to consumers which is not reasonably avoidable by consumers themselves and not
23 outweighed by countervailing benefits to consumers or to competition. 15 U.S.C.
24 § 45(n).

25 26. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the
26 dissemination of any false advertisement in or affecting commerce for the purpose
27 of inducing, or which is likely to induce, the purchase of food, drugs, devices,
28 services, or cosmetics. For the purposes of Section 12 of the FTC Act, Nobetes is

1 a “food” or “drug” as “food” and “drug” are defined in Sections 15(b) and (c) of
2 the FTC Act, 15 U.S.C. § 55(b) and (c).

3 **COUNT I: FALSE OR UNSUBSTANTIATED DIABETES CLAIMS**

4 27. Through the means described in Paragraphs 17 and 19, Defendants
5 have represented, directly or indirectly, expressly or by implication, that:

- 6 A. Nobetes treats diabetes;
7 B. Nobetes reduces high blood sugar;
8 C. Nobetes reduces or eliminates the need for blood sugar
9 medications such as insulin;
10 D. Nobetes keeps blood sugar within normal levels; and
11 E. Nobetes benefits diabetics by replenishing nutrient deficiencies
12 caused by diabetes.

13 28. The representations set forth in Paragraph 27 are false or misleading,
14 or were not substantiated, at the time the representations were made.

15 29. Therefore, the making of the representations as set forth in Paragraph
16 27 of this Complaint constitutes a deceptive act or practice and the making of false
17 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of
18 the FTC Act, 15 U.S.C. §§ 45(a) and 52.

19 **COUNT II: FALSE CLAIM REGARDING ENDORSER DARNELL**

20 30. Through the means described in Paragraph 17, Defendants have
21 represented, directly or indirectly, expressly or by implication, that endorser Mitch
22 Darnell is a qualified scientific or medical expert in blood sugar regulation and
23 diabetes treatment.

24 31. In truth and in fact, endorser Mitch Darnell is not a qualified scientific
25 or medical expert in blood sugar regulation or diabetes treatment. Mr. Darnell is
26 an actor.

27 32. Therefore, the making of the representations as set forth in Paragraph
28 30 of this Complaint constitutes a deceptive act or practice and the making of false

1 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of
2 the FTC Act, 15 U.S.C. §§ 45(a) and 52.

3 **COUNT III: FAILURE TO DISCLOSE**
4 **MATERIAL CONNECTIONS WITH ENDORSERS**

5 33. Through the means described in Paragraph 17, Defendants have
6 represented, expressly or by implication, that the endorsers appearing in
7 advertising recommend Nobetes.

8 34. Defendants have failed to disclose that Defendants provided many of
9 the endorsers with free product.

10 35. This additional information would be material to consumers in their
11 evaluation of the endorsements in connection with their purchase or use of
12 Nobetes.

13 36. Defendants' failure to disclose the material information described in
14 Paragraph 34, in light of the representation made in Paragraph 33, constitutes a
15 deceptive act or practice and the making of false advertisements, in or affecting
16 commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a)
17 and 52.

18 **COUNT IV: FAILURE TO DISCLOSE**
19 **MATERIAL TERMS OF OFFER**

20 37. Through the means described in Paragraphs 17 and 20, Defendants
21 have represented, directly or indirectly, expressly or by implication, that consumers
22 can obtain a "free trial" of Nobetes by paying \$6.95 for shipping and handling.

23 38. In truth and in fact, in numerous instances in which Defendants have
24 made the representation set forth in Paragraph 37, Defendants have failed to
25 disclose, or disclose adequately, to consumers, material terms and conditions of
26 their offer, including:

27 A. That Defendants will automatically enroll consumers in a
28 negative option continuity plan with additional charges;

1 B. The cost of the continuity plan, and the frequency and duration
2 of the recurring charges; and

3 C. The date and the means by which consumers must cancel to
4 avoid additional charges.

5 39. Defendants' failure to disclose, or to disclose adequately, the material
6 information described in Paragraph 38, in light of the representation made in
7 Paragraph 37, constitutes a deceptive act or practice in violation of Section 5(a) of
8 the FTC Act, 15 U.S.C. § 45(a).

9

10 **COUNT V: UNFAIRLY CHARGING CONSUMERS WITHOUT**
11 **AUTHORIZATION**

12 40. In numerous instances, Defendants have caused charges to be
13 submitted for payment to the credit cards of consumers without the express
14 informed consent of consumers.

15 41. Defendants' practices caused or are likely to have caused substantial
16 injury to consumers that consumers could not reasonably avoid themselves and that
17 is not outweighed by countervailing benefits to consumers or competition.

18 42. Therefore, Defendants' practices as described in Paragraphs 17, 20,
19 22, and 23, above, constitute unfair acts or practices in violation of Section 5 of the
20 FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

21 **CONSUMER INJURY**

22 43. Consumers are likely to have suffered substantial injury as a result of
23 Defendants' violations of the FTC Act. In addition, Defendants have been unjustly
24 enriched as a result of their unlawful acts or practices. Absent injunctive relief by
25 this Court, Defendants are likely to continue to injure consumers, reap unjust
26 enrichment, and harm the public interest.

27 **PRAYER FOR RELIEF**

28 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15

1 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

2 A. Enter a permanent injunction to prevent future violations of the FTC
3 Act by Defendants;

4 B. Award such relief as the Court finds necessary to redress injury to
5 consumers resulting from Defendants' violations of the FTC Act, including but not
6 limited to, rescission or reformation of contracts, restitution, the refund of monies
7 paid, and the disgorgement of ill-gotten monies; and,

8 C. Award Plaintiff the costs of bringing this action, as well as such other
9 and additional relief as the Court may determine to be just and proper.

10
11 Respectfully submitted,

12 ALDEN F. ABBOTT
13 General Counsel

14 Dated: December 3, 2018

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